

**U.S. Army
Corps of Engineers
Civil Works
Policy
Pocket Reference**

Prepared by the
Policy and Policy Compliance Division
and
Planning Community of Practice
Directorate of Civil Works
Headquarters
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This edition of the
Civil Works Policy Pocket Reference
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PREFACE

This Pocket Reference has been developed to provide a succinct summary of the U.S. Army Corps of Engineers authorities and policies that address its water resources missions. Comments and suggestions on this guide should be addressed to:

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ACRONYMS

ASA(CW) - Assistant Secretary of the Army
(Civil Works)
CAP- Continuing Authorities Program
CFR - Code of Federal Regulations
CG - Construction General
DOD - Department of Defense
DOE - Department of Energy
DOI - Department of Interior
DPR - Detailed Project Report
DSAP - Dam Safety Assurance Program
E&D - Engineering and Design
EPA - Environmental Protection Agency
F&WL - Fish and Wildlife
FCA - Flood Control Act
FERC - Federal Energy Regulatory
Commission
FY - Fiscal Year
GNF - General Navigation Features
IWTF - Inland Waterways Trust Fund
LER - Lands, Easements, and Rights-of-Way
LERR - Lands, Easements, Rights-of-Way
and Relocations
LERRD - Lands, Easements, Rights-of-Way,
Relocations and Disposal/Borrow Areas
mlw - mean low water
NED - National Economic Development
NER – National Environmental Restoration
NEPA - National Environmental Policy Act
of 1969
OMRR&R - Operations, Maintenance, Repair,
Replacement and Rehabilitation

ACRONYMS

OSE – Other Social Effects
PCA - Project Cooperation Agreement
PDC - Paid During Construction
PED - Preconstruction Engineering and Design
P.L. - Public Law
PMA - Power Marketing Agency
RED – Regional Economic Development
RHA - Rivers and Harbors Act
S&A - Supervision and Administration
SA - Secretary of the Army
SRUF - Special Recreation Use Fees
TPC - Total Project Costs
U.S.C. - United States Code
WRDA - Water Resources Development Act

NAVIGATION, Harbors

Authorities

- Sections 101, 203, 204 and 214, WRDA 1986, (P.L. 99-662)
- Section 13, WRDA 1988 (P.L. 100-676)
- Section 201, WRDA 1996 (P.L. 104-303)

Provisions

- Federal work must be in the general public interest and available to all on equal terms.
- The Federal interest extends only to GNF: primary access channels, anchorages, turning basins, locks and dams, harbor areas, jetties and breakwaters.
- Non-Federal sponsor may plan, design and construct navigation projects and be reimbursed the Federal share. NOTE: Use of this authority requires advance approval and close coordination with HQUSACE.

Cost Sharing, Harbors

- For providing depths to 20 feet below mlw, the non-Federal sponsor pays 10% of the GNF

NAVIGATION, Harbors (continued)

Cost Sharing, Harbors (continued)

- For providing depths from 20 feet to 45 feet below mlw, the non-Federal sponsor pays 25% of the GNF
- For providing depths exceeding 45 feet below mlw, the non-Federal sponsor pays 50% of the GNF

Non-Federal sponsors must:

- Provide, at their expense, all ancillary shore side harbor facilities such as docks, terminal and transfer facilities, berthing areas, and local access channels.
- Provide all LERR (with exceptions per page 3) for construction and maintenance;
- Provide cash contributions toward the costs for construction of the GNF of the project, which includes the costs of constructing land-based and aquatic dredged material disposal facilities, paid during construction;
- Hold and save the U.S. free from damages due to the construction, operation and maintenance dredging;
- Contribute 50% of the incremental costs for maintenance dredging associated with project depths in excess of 45 feet;

NAVIGATION, Harbors (continued)

Cost Sharing, Harbors (continued)

- For all depths, provide an additional cash contribution equal to 10% of GNF, which includes dredged material disposal construction costs. These costs may be paid over a period not exceeding 30 years. The sponsor's costs for LERR, except utilities, are credited against the additional cash contribution.

NOTE: Administration policy allows budgeting for harbors and waterway segments with high volumes of commercial traffic and lower-use harbors that support significant commercial or subsistence fishing or provide public transportation benefits.

Relocations Exceptions

- The owner of a utility requiring relocation as part of an improvement deeper than 45 feet below mlw must pay 50% of the relocation costs and the non-Federal sponsor must pay the other 50% of the relocations cost. However, the non-Federal sponsor shall receive a credit for the utility relocation costs against the additional cash contribution (see above).

NAVIGATION, Harbors (continued)

Cost Sharing, Harbors (continued)

- The owner of a bridge requiring modification must share in the costs according to the principles of the Truman-Hobbs Act (P.L. 77- 647); the balance is cost shared as part of the GNF.

NAVIGATION, Harbors, Disposal Partnerships

Authority

- Section 217, WRDA 1996 (P.L. 104-303)

Provisions

- The SA may, at the request of a non-Federal interest, add capacity at a dredged material disposal facility being constructed by the SA if the non-Federal sponsor pays, during the period of construction, all costs associated with the additional capacity. The non-Federal sponsor can set and collect fees assessed to third parties to recover those costs.
- The SA may allow non-Federal interests to use capacity in an existing Corps disposal facility if such use will not reduce the availability of the facility for the Federal project. The SA can impose fees to recover capital, operation, and maintenance costs associated with the non-Federal interests' use.
- The SA may use public-private partnerships in the design, construction, management, or operation of dredged material disposal facilities in connection with construction or maintenance of Federal navigation projects.

**NAVIGATION, Harbors, Disposal
Partnerships** (continued)

Provisions (continued)

- These partnerships may be implemented through agreements with non-Federal public interests, a private entity, or both. Funds for the work may be provided in whole or in part by the private entity.
- The SA may reimburse the private entity, subject to appropriations, for the disposal of dredged material in the facility through the payment of a disposal user fee. The fee shall be sufficient to recover the funds contributed by the private entity plus a reasonable rate of return on investment.
- The Federal share of the fee shall be equal to the percentage of the total cost that would otherwise be borne by the Federal Government as required pursuant to existing cost sharing requirements.

NAVIGATION, Inland Waterways, Locks and Dams

Authorities

- Section 102, WRDA 1986 (P.L. 99-662)
- Section 206, Inland Waterways Revenue Act of 1978 (P.L. 95-502) , as amended by Section 1405, WRDA 1986.
- Specific Waterway and Project Authorizations. Section 206 of the Inland Waters Revenue Act of 1978, as amended, (33 U.S.C. Section 1804) contains the listing of inland waterways subject to fuel taxes paid in to the IWTF.

Provisions

- Lock and dam replacements are generally studied and recommended for specific Congressional authorization; other extensive work is normally accomplished under the major rehabilitation program.

**NAVIGATION, Inland Waterways, Locks
and Dams** (continued)

Cost Sharing

- If the waterway users are subject to fuel taxes paid into the IWTF, there are not any non-Federal cost sharing requirements in connection with the Federal project improvements to the waterway (not for LERRD, construction, or OMRR&R).
- Construction costs are funded 50% from the Federal general revenues and 50% from the IWTF. Maintenance costs are funded 100% from Federal general revenues.
- Inland channels not specifically designated by Congress as part of the taxable system will be cost shared according to the terms for harbors.

NAVIGATION, Section 107

Authorities

- Section 107, 1960 RHA (P.L. 86-645) as amended. This is a CAP
- Section, 915(d), WRDA 1986, (P.L. 99-662)

Provisions

- Without specific authorization, the Corps may study, adopt, construct and maintain navigation projects, using same procedures and policies that apply to Congressionally authorized projects.
- The Federal share of initial implementation costs for any one project may not exceed \$4 million and the program limit is \$35 million per year.
- A fact sheet must be submitted to HQUSACE for concurrence with the ASA(CW) before construction funds can be committed and prior to executing a PCA.

Cost Sharing

- Non-Federal sponsors must participate in project costs and OMRR&R in accordance with the established requirements herein set forth for navigation projects or measures (general harbor features, inland waterways, or recreational harbor features, as the case may be).
- The non-Federal sponsor must hold and save the U.S. free from damages due to the construction, operation and maintenance.
- The non-Federal sponsor is also responsible for all project and maintenance dredging costs in excess of the Federal cost limitation.

NAVIGATION, Clearing and Snagging, Section 3

Authorities

- Section 3, 1945 RHA (P.L. 79-14), as amended. This is a CAP.
- Section 915(g), WRDA 1986 (99-662).

Provisions

- Without specific authorization, the Corps may undertake emergency clearing and snagging for navigation.
- May be used for clearance of obstructions both within authorized projects and at non-project locations used for navigation.
- May not be used to alleviate normal shoaling or for betterments.
- No specific limit on Federal costs per location; there is an annual program limit of \$1 million.

Cost Sharing

- Non-Federal sponsors are responsible for any LERRD requirements, for any recurring maintenance, and must hold and save the U.S. free from damages due to the construction.

**NAVIGATION, Mitigation of Damages,
Caused by Federal Navigation Projects,
Section 111**

Authorities

- Section 111, 1968 RHA (P.L. 90-483), as amended. This is a CAP.
- Section 940, WRDA 1986 (P.L. 99-662)
- Section 214, WRDA 1999 (P.L. 106-53)

Provisions

- Without specific authorization, the Corps may investigate, study, plan, and implement measures (structural or nonstructural) to prevent or mitigate damage to shorelines attributable to Federal navigation projects.
- The Federal share of costs for any one project may not exceed \$5 million. (Specific congressional authorization is required for a meritorious project for which the Federal share of costs would exceed this limit).

**NAVIGATION, Mitigation of Damages,
Caused by Federal Navigation Projects,
Section 111 (continued)**

Cost Sharing

- Non-Federal sponsors must share in the mitigation costs in the same proportion they shared in the costs for the navigation project causing the damage.
- Non-Federal sponsors are responsible for operations, maintenance, repair, replacement and rehabilitation of the mitigation measures.
- Non-Federal sponsor must hold and save the U.S. free from damages due to the construction, operation and maintenance.
- Non-Federal sponsors may be required to provide public access if the mitigation project is within a reach of shoreline where public access is required under another Federal project.

NAVIGATION, Recreation

Authority

- Section 103(c)(4), WRDA 1986,
(P.L. 99-662)

Cost Sharing

- Non-Federal sponsors must provide, at their expense, all ancillary shoreside facilities, marina facilities including interior access channels and berthing areas.
- Non-Federal sponsors must provide all related LERRD for construction, operation and maintenance, except to the extent that the value may exceed 50% of the total (separable and joint, if any) recreational navigation costs.
- If the value of the LERRD contribution specified above is less than 50% of total recreational navigation costs (GNF costs plus LERRD), non-Federal sponsors must provide a cash contribution PDC, so that the total non-Federal share (cash plus LERRD) equals 50%.

NAVIGATION, Recreation (continued)

Cost Sharing

- Non-Federal sponsors must pay 100% of the OMRR&R costs and hold and save the U.S. free from damages due to the construction, operation and maintenance.

Note: Administration policy precludes budgeting for projects where recreational boating benefits predominate.

FLOOD DAMAGE REDUCTION, Structural

Authorities

- Sections 1 and 3, 1936 FCA, (P.L. 74-738)
- Section 2, 1941 FCA (P.L. 77-228)
- Section 103, WRDA 1986, (P.L. 99-662) as amended by Section 202(a), WRDA 1996, (P.L. 104-303)
- Section 402, WRDA 1986, (P.L. 99-662) as amended by Section 202(c), WRDA 1996, (P.L. 104-303) and Section 209, WRDA 2000 (P.L. 104-303)
- Section 211, WRDA 1996 (P.L. 104-303)

Provisions

- Federal Government should participate in improvement(s) for flood control purposes if the benefits to whomsoever they may accrue are in excess of the estimated costs (Section 1, 1936 FCA).
- Non-Federal sponsors must comply with Federal flood insurance program and prepare floodplain management plan within one year after signing PCA and implement plan one year after project completion.

FLOOD DAMAGE REDUCTION, Structural
(continued)

Provisions (Continued)

- Non-Federal sponsor may plan, design and construct flood damage reduction projects and be reimbursed the Federal share. NOTE: Use of this authority requires advance approval and close coordination with HQUSACE.

Cost Sharing

- Non-Federal interests must provide all LERRD not contaminated by hazardous, radioactive and toxic wastes, and a minimum cash contribution of 5% of the TPC of the structural flood control features, PDC.
- For projects authorized on or before the date of enactment of WRDA 1996 (12 October 1996): If the value of the contributions specified above is less than 25% of TPC, non-Federal sponsors must provide an additional cash contribution PDC so that the total non-Federal share equals 25% of TPC.

FLOOD DAMAGE REDUCTION, Structural
(continued)

Cost Sharing (continued)

- For projects authorized after the date of enactment of WRDA 1996 (12 October 1996): If the value of the contributions specified above is less than 35% of TPC, non-Federal sponsors must provide an additional cash contribution PDC so that total non-Federal share equals 35% of TPC.
- The maximum non-Federal contribution will not exceed 50% of TPC (5% cash plus 45% credit for LERRD). Arrangements for funding LERRD requirements that may exceed 45% of TPC is covered in the PCA.
- Non-Federal sponsors must pay 100% of OMRR&R costs and hold and save the U.S. free from damages due to the construction, operation and maintenance.

FLOOD DAMAGE REDUCTION,

Nonstructural

Authorities

- Section 3, 1938 FCA (P.L. 75-61)
- Section 73, WRDA 1974 (P.L. 93-251)
- Section 103(b), WRDA 1986,
(P.L. 99-662)
- Section 308, WRDA 1990 (P.L. 101-640)
- Section 202(a) WRDA 1996,
(P.L. 104-303)
- Section 402, WRDA 1986, (P.L. 99-662)
as amended by Section 202(c), WRDA
1996, (P.L. 104-303) and Section 209,
WRDA 2000 (P.L. 104-303)

Provisions

- In Corps project planning, consideration must be given to nonstructural alternatives to prevent or reduce flood damages.
- Non-Federal sponsors must comply with Federal flood insurance program and prepare floodplain management plan within one year after signing PCA and implement plan one year after project completion.

**FLOOD DAMAGE REDUCTION,
Nonstructural** (continued)

Cost Sharing

- For projects authorized on or before the date of enactment of WRDA 1996 (12 October 1996), non-Federal sponsors must provide all LERRD, except to the extent that the value thereof may exceed 25% of TPC for the nonstructural measures.
- For projects authorized after the date of enactment of WRDA 1996 (12 October 1996), non-Federal sponsors must provide all LERRD, except to the extent that the value thereof may exceed 35% of TPC for the nonstructural measures.
- If the value of non-Federal contributions is less than 25% or 35% of TPC (depending on when the project was authorized), a cash contribution must be made after project construction completion so that, when combined with LERRD value, the total non-Federal share equals the appropriate share (25% or 35%) of TPC.
- Non-Federal sponsors must pay 100% of OMRR&R related to nonstructural measures and hold and save the U.S. free from damages due to the construction, operation and maintenance.

FLOOD DAMAGE REDUCTION, Section 205

Authorities

- Section 205, 1948 FCA (P.L. 80-858), as amended. This is a CAP
- Section 202, WRDA 1996 (P.L. 104-303)
- Section 201, WRDA 1999 (P.L. 106-53)
- Section 218, WRDA 2000 (P.L. 106-541)

Provisions

- Without specific authorization, Corps may study, adopt and construct flood damage reduction projects.
- Non-Federal sponsors must comply with Federal flood insurance program and prepare floodplain management plan within one year after signing PCA and implement plan one year after project completion.

**FLOOD DAMAGE REDUCTION, Section
205 (continued)**

Cost Sharing

- The Federal share of costs for any one project may not exceed \$7 million and the Federal program is limited to \$50 million per year.
- The non-Federal sponsor is responsible for all costs in excess of the Federal per project limit, even if it results in a non-Federal share greater than the maximum non-Federal cost sharing percentage for structural flood control measures (50%, see page 17) or nonstructural flood control measures (35%). The use of the Section 205 for such high cost projects is not advised.
- Non-Federal sponsors must participate in project costs in accordance with the established requirements as previously set forth for flood control projects or measures (structural or nonstructural), except that the non-Federal cost sharing percentage to be used will depend on whether the DPR was approved, on or before (25%) or after (35%) 12 October 1996. If no DPR was prepared, the non-Federal cost sharing percentage to be used will depend on whether construction was initiated on or before (25%) or after (35%) 12 October 1996.

FLOOD DAMAGE REDUCTION, Clearing and Snagging, Section 208

Authorities

- Section 208, 1954 FCA (P.L. 83-780), as amended. This is a CAP.
- Section 202, WRDA 1996 (P.L. 104-303)

Provisions

- Without specific authorization, Corps may study, adopt and construct in-stream clearing and snagging projects in the interest of flood control.
- The Federal share of costs for any one project may not exceed \$500,000 (per Section 915(b), P.L. 99-662).

Cost Sharing

- Non-Federal sponsors must participate in project costs in accordance with the established requirements as previously set forth for structural flood control projects (see page 16) or measures under the Section 205 authority.
- The non-Federal sponsor is also responsible for all costs in excess of the Federal cost limit.

FLOOD DAMAGE REDUCTION, Flood Plain Management Services Program

Authority

- Section 206, 1960 FCA (P.L. 86-645), as amended.

Provisions

- General authority to provide flood plain information and planning assistance to state, county, and city governments, as well as to other Federal agencies.
- Flood and flood plain information is also provided to private citizens, corporations, and groups.
- Flood proofing and general flood plain management guidelines are developed and published.
- Hurricane Evacuation Studies and Flood Warning Preparedness Studies are conducted jointly with other Federal agencies for state and local governments.

**FLOOD DAMAGE REDUCTION, Flood Plain
Management Services Program** (continued)

Provisions (continued)

- Non-Federal public entities need not pay the Corps for these services; private citizens and other Federal agencies are required to pay for these services. Involvement of requesters is strongly encouraged.

EMERGENCY STREAMBANK AND SHORE PROTECTION, Section 14

Authorities

- Section 14, 1946 FCA (P.L. 79-526), as amended. This is a CAP.
- Section 27, WRDA 1974 (P.L. 93-251)
- Section 915(c), WRDA 1986, (P.L. 99-662)
- Section 219, WRDA 1996 (P.L. 104-303).

Provisions

- Authorizes the Corps to study, adopt and construct emergency streambank and shoreline protection works to protect public highways and bridges, and other public works, and nonprofit public services such as churches, hospitals, and schools.
- The annual program limit for Federal expenditures is \$15,000,000, with not more than \$1,000,000 in Federal expenditures at any one site.

EMERGENCY STREAMBANK AND SHORE PROTECTION, Section 14, (continued)

Cost-Sharing

- Non-Federal sponsors provide needed LERRD and 25% cash, (if the DPR was approved on or before 12 October 1996), or at least 35% cash (if the DPR was approved after 12 October 1996). If no DPR was prepared, the non-Federal cost sharing percentage to be used will depend on whether construction was initiated on or before (25%) or after (35%) 12 October 1996.
- When the Federal share of costs would otherwise exceed the per project limit (\$1,000,000), non-Federal sponsors must provide the excess.
- Non-Federal sponsors must provide OMRR&R for the completed project and hold and save the U.S. free from damages due to the construction, operation and maintenance.

COASTAL STORM DAMAGE REDUCTION, Shore Protection, General

Authorities

- 1946 Shore Protection Cost Sharing Act (P.L. 79-727), as amended.
- Section 55, WRDA 1974 (P.L. 93-251)
- 1956 Beach Nourishment Act, (P.L. 84-826)
- Sections 103 (c) (5) and (d), WRDA 1986, (P.L. 99-662)
- Section 402, WRDA 1986, (P.L. 99-662) as amended by Section 14, WRDA 1988(P.L. 100-676), Section 202(c), WRDA 1996, (P.L. 104-303) and Section 209, WRDA 2000 (P.L. 104-303)
- Section 215 (a), WRDA 1999, (P.L. 106-53)
- Section 206, WRDA 1992 (P.L. 102-980)

Provisions

- Establishes policy to assist in construction of coastal storm damage reduction projects designed to reduce damages caused by wind-generated and tide-generated waves and currents along the Nation's coasts, Gulf of Mexico, the Great Lakes, and estuary shores.

**COASTAL STORM DAMAGE REDUCTION,
Shore Protection, General**

(continued)

Provisions (continued)

- The Corps can provide technical and engineering assistance to non-Federal public interests in developing structural and nonstructural methods of preventing damages attributable to shore and streambank erosion (WRDA 1974, P.L. 93-251)
- Federal assistance in periodic beach nourishment is provided on the same basis as new construction when it would be the most suitable and economical remedial measure (P.L. 84-826).
- Non-Federal sponsors must comply with Federal flood insurance program and prepare floodplain management plan within one year after signing PCA and implement plan one year after project completion (Section 402, WRDA 1986, (P.L. 99-662) as amended).
- ASA(CW) policy stipulates that Corps projects be formulated primarily for coastal storm damage reduction.

**COASTAL STORM DAMAGE REDUCTION,
Shore Protection, General**
(continued)

Provisions (continued)

- The Administration's shore protection policy is that projects that support mainly recreation activities or projects in tourist or recreation areas that provide substantial income to regional and local economies can be undertaken solely by non-Federal interests.
- Non-Federal sponsor may plan, design and construct coastal storm damage reduction projects and be reimbursed the Federal share. NOTE: Use of this authority requires advance approval and close coordination with HQUSACE.

Cost Sharing

- Non-Federal sponsors are responsible for providing all lands, easements, rights-of-way, relocations and dredged material disposal areas (LERRD) and public access.
- Costs assigned to protection of Federally owned lands and/or shores are 100% Federal for initial construction and periodic nourishment.

**COASTAL STORM DAMAGE REDUCTION,
Shore Protection, General**
(continued)

Cost Sharing (continued)

- Costs assigned to privately owned lands (undeveloped) and shores (where use of the shores is limited to private interests) are 100% non-Federal for initial construction and periodic nourishment.
- Costs assigned to privately owned, developed lands where criteria for public access to and public use of the shores are met are 35% non-Federal.
- Costs assigned to non-Federal public shores used for parks and recreation are 50% non-Federal.
- The non-Federal costs for LERRD will be credited against the sponsor's total (percent) responsibility or sharing construction costs; any cost for LERRD in excess of 35% will be reimbursed to the sponsor.
- Non-Federal interests must pay 100% of OMRR&R costs assigned to non-Federal shores, and hold and save the U.S. free from damages due to the construction, operation and maintenance.

**COASTAL STORM DAMAGE REDUCTION,
Shore Protection, General**
(continued)

Cost Sharing (continued)

- Costs assigned for periodic nourishment to privately owned, developed lands where criteria for public access to and public use of the shores are met is a non-Federal responsibility.

**COASTAL STORM DAMAGE REDUCTION,
Shore Protection,
Section 103**

Authorities

- Section 3, Act of 13 August 1946, (P.L. 79-727). This is a CAP.
- Section 103, 1962 RHA (P.L. 87-874)
- Sections 103(c), 103(d), 103(i), and 915(e) (P.L. 99-662), WRDA 1986
- Section 402, WRDA 1986, (P.L. 99-662) as amended by Section 14, WRDA 1988(P.L. 100-676), Section 202(c), WRDA 1996, (P.L. 104-303) and Section 209, WRDA 2000 (P.L. 104-303)
- Section 215 (a), WRDA 1999, (P.L. 106-53)
- Section 226, WRDA 1999 (P.L. 106-53)

**COASTAL STORM DAMAGE REDUCTION,
Shore Protection,
Section 103 (continued)**

Provisions

- Without specific authorization, the Corps may study, adopt and construct continuing authority beach erosion control projects.
- Federal costs for each project may not exceed \$3,000,000 and the Federal program is limited to \$30 million per year.
- ASA(CW) policy stipulates that Corps projects be formulated primarily for hurricane and storm damage reduction.
- The Administration's shore protection policy is that projects that support mainly recreation activities or projects in tourist or recreation areas that provide substantial income to regional and local economies can be undertaken solely by non-Federal interests.

Cost Sharing

- Same as Congressionally-authorized projects (see pages 30, 31 and 32).

EMERGENCY PREPAREDNESS, RESPONSE, and RECOVERY

Authorities

- Section 5a, FCA of August 18, 1941, (P.L. 77-228), as amended
- Emergency Flood Control Funds Act of 1955 (P.L. 84-99)
- RHA of 1962, (P.L. 87-874)*
- Section 82, WRDA 1974 (P.L. 93-251)*
- P.L. 95-51*
- Section 302, WRDA 1990 (P.L. 101-640)*
- Section 203 (e and f), WRDA 1996 (P.L. 104-303)*

* amendments to P.L. 84-99 and collectively referred to as P.L. 84-99

**EMERGENCY PREPAREDNESS,
RESPONSE, and RECOVERY (continued)**

Provisions

P.L. 84-99 and prior legislation allow Corps participation in:

- Planning and preparedness for all natural disasters, P.L. 84-99 and P.L. 101-640;
- Flood fighting and rescue operations, FCA of 1941;
- Emergency repair and restoration of flood damaged or destroyed flood control works, FCA of 1941;
- Emergency protection, repair and restoration of Federal hurricane or shore protection project structures damaged or destroyed by extraordinary storm, P.L. 87-874;
- Emergency supply of clean drinking water where source is contaminated, P.L. 93-251;
- Emergency supply of clean drinking water in drought distressed areas, P.L. 95-51;
- Nonstructural alternatives to the repair or restoration of flood damaged flood control works, P.L. 104-303; and
- Advance Measures to prevent loss of life and catastrophic property damage when there is an imminent threat of unusual flooding, P.L. 84-99.

**EMERGENCY PREPAREDNESS,
RESPONSE, and RECOVERY (continued)**

**Policy and Cost Sharing - Common to all
Corps Assistance under P.L. 84-99**

- Corps assistance is undertaken only to supplement tribal, state, and local efforts. Corps assistance is at 100% Federal cost, except as provided below.
- Public sponsors must provide all required LERRD.
- Public sponsors are responsible for 100% of the OMRR&R requirements in connection with assistance under P.L. 84-99, and must hold and save the U.S. free from damages due to the construction, operation and maintenance.
- The sponsor may be asked, in connection with these or any other of the efforts authorized under Section 5(a) of the FCA of 1941, as amended, to provide such other measures of cooperation as, in the discretion of the Chief of Engineers, would be appropriate to the specific case.
- A Cooperation Agreement (CA) is required for all direct assistance.

**EMERGENCY PREPAREDNESS,
RESPONSE, and RECOVERY (continued)**

**Policy and Cost Sharing - Rehabilitation
Assistance for Damaged Flood Control
Works**

Non-Federal Projects:

- Must be inspected by the Corps (prior to occurrence of any damage) and meet minimum Corps standards, which results in granting of Active status.
- Must pass periodic continuing eligibility inspections to maintain Active status. Only Active projects are eligible for Rehabilitation Assistance. A benefit/cost ratio greater than unity is required for the Rehabilitation Assistance.
- Public sponsor pays 20% of the rehabilitation costs, including S&A, and Contingency and provides all LERRD for Rehabilitation Assistance, as well as all deferred and deficient maintenance costs.

Federal Projects:

- Are granted Active status upon turnover to the public sponsor for OM&RRR.

**EMERGENCY PREPAREDNESS,
RESPONSE, and RECOVERY (continued)**

**Policy and Cost Sharing - Rehabilitation
Assistance for Damaged Flood Control
Works (continued)**

Federal Projects: (continued)

- Must pass periodic continuing eligibility inspections to maintain Active status. Only Active projects are eligible for Rehabilitation Assistance. A benefit/cost ratio greater than unity is required for the Rehabilitation Assistance. Assistance is at 100% Federal cost, excluding costs for LERRD and deferred and deficient maintenance.

- Federal Hurricane and Storm Damage Reduction, Shore Protection Projects: Rehabilitation of structural features of these projects is performed as stated above for Federal projects. The damage must have been caused by an "extraordinary storm". Standard level of assistance is to replace sand lost or to restore minimum effective functioning of the project, whichever is less. Normally, renourishment to original level is required. Cost sharing for the added increment will be in accordance with PCA for original project and paid with CG funds.

**EMERGENCY PREPAREDNESS,
RESPONSE, and RECOVERY (continued)**

**Policy and Cost Sharing - Rehabilitation
Assistance for Damaged Flood Control
Works (continued)**

Nonstructural Alternative Project

- There is a nonstructural alternative project option available in lieu of structural rehabilitation for both Federal and non-Federal projects. The public sponsor must request the nonstructural alternative. The Corps may bear up to 100% of the cost of the nonstructural alternative project, subject to a cost cap for Corps costs.

**Policy and Cost Sharing - Advance
Measures Assistance under P.L. 84-99**

- Standard for provision of Advance Measures assistance is an "imminent threat of unusual flooding".
- Cost sharing: Investigation and technical assistance are 100% Federal cost. Assistance using a temporary standard of construction is at 100% Federal cost. Assistance using a permanent standard of construction is normally 75% Federal cost and 25% non-Federal cost.

**EMERGENCY PREPAREDNESS,
RESPONSE, and RECOVERY (continued)**

**Policy and Cost Sharing - Emergency
Water Assistance under P.L. 84-99**

Emergency Water Assistance Due to
Contaminated Water Source

- The Corps may provide water to any locality confronted with a source of contaminated water causing or likely to cause a substantial threat to the public health and welfare of the locality. Various ways to establish existence of a threat can be used. The Corps may purchase, transport and distribute water to meet minimum human health and welfare needs at 100% Federal expense. Long term restoration of water supplies is a local responsibility.

Emergency Water Assistance Due to Drought

- Requires drought distressed area declaration by the Director of Civil Works in conjunction with the ASA(CW). The Corps may transport water to meet minimum essential health and welfare needs at 100% Federal expense. Purchase of water is a local responsibility. Long term restoration of water supplies is a local responsibility.

HYDROELECTRIC POWER, General

Authorities

- Section 4, FCA of 1938 (P.L. 75-61) and other specific Congressional authorizations direct consideration of hydroelectric power.
- Section 5, FCA of 1944 (P.L. 78-534)
- Section 103 (c) (1), WRDA 1986, (P.L. 99-662)
- Section 703 of WRDA 1986 (P.L. 99-662)
- Federal Columbia River Transmission System Act (P.L. 93-454)

Provisions

- Corps policy is to maximize sustained public benefits from each of its projects for all desirable purposes, including power.
- Power developed at Corps projects surplus to project needs is turned over to DOE for marketing (P.L. 78-534).

HYDROELECTRIC POWER, General

(continued)

Provisions (continued)

- Non-Federal power developments may be constructed at Corps projects through FERC licensing procedures, and it is Corps policy to encourage non-Federal interests to develop such hydropower potential where it is feasible and not authorized for Federal development.
- Recommendations for Federal development in Corps reports are made only if it can be shown that non-Federal development is impractical (i.e., non-Federal project would produce significantly fewer net NED benefits than a Federal project when all project outputs are considered).
- No general authority exists for Corps to develop power at non-Corps sites, but this has been done with specific Congressional authority.
- Bonneville Power Administration (BPA) is 1 of 4 regional power marketing administrations and has been authorized to use its revenues to finance the costs of operation, maintenance and capital construction (P.L. 93-454). As a result starting in FY 1999 BPA began direct funding Corps Pacific Northwest power

HYDROELECTRIC POWER, General

(continued)

Provisions (continued)

O&M costs including O&M capital investments. Currently, the other three power marketing administrations fund O&M costs through appropriations.

Cost-Sharing

- All capital investment and OMRR&R costs allocated to power are 100% paid for by others on a reimbursable basis. DOE's PMA's establish power rates that will recover costs over time (usually 50 years).
- Section 103(c)(1) of P.L. 99-662 provides that cost sharing will be in accordance with existing law, which anticipates recovery of project costs after project completion through rates set by the PMA. As a matter of Administration policy, every effort is made to seek payment of construction costs from a non-Federal sponsor during the construction period.
- Section 703 of WRDA 1986 (P.L. 99-662), authorizes the SA, upon request of non-Federal interests, to survey the potential and methods of rehabilitating former industrial sites, millraces, etc., for use as hydroelectric facilities, and to provide

technical assistance in dredging
HYDROELECTRIC POWER, General
(continued)

Cost Sharing (continued)

projects to rehabilitate the sites that have been surveyed. In return, the non-Federal entity will receive the power produced or an equivalent value of power for a period of 30 years.

HYDROELECTRIC POWER, Facilities for Future Power Installations (Minimum Provisions)

Authority

- Section 4, 1938 FCA (P.L. 75-761) and subsequent authorizing acts.

Provisions

- Penstocks and other similar facilities may be included in the initial construction of projects where power is not authorized. This requires approval of the SA, on recommendation of the Corps and FERC.
- Probability of future economic and financial viability and willingness of non-Federal interests to finance or contract for the facilities must be determined.
- Purpose of this authority is to preclude loss of hydropower viability and to provide significant future construction savings.

Cost-Sharing

- Costs allocated to hydropower are 100% paid by others on a reimbursable basis. The power marketing agencies of DOE establish rates that will recover costs over time (usually 50 years) when the power is ultimately developed.

WATER SUPPLY STORAGE

Authorities

- Water Supply Act of 1958 (P.L. 85-500), as amended, 43 USC 390b
- P.L. 88-140 (1963), 43 USC 390c et seq., Permanent Rights to Storage
- Section 103 (c) (2) and (3), WRDA 1986, (P.L. 99-662), 33 USC 2213(c)(2) and (3), Cost Sharing
- Section 931 WRDA 1986 (P.L. 99-662), Interim Use of Water Supply for Irrigation (see 43 USC 390)
- Section 932, WRDA 1986 (P.L. 99-662), Amendments to Water Supply Act of 1958

Provisions

- Water supply storage capacity or space may be included in any Corps reservoir to impound water for present and future municipal or industrial use. Not more than 30% of the total allocated costs may be for future water needs.
- Modification of an existing reservoir, by structural changes or reallocation of existing storage, to add or increase dedicated storage capacity or space for water supply, requires separate

WATER SUPPLY STORAGE (continued)

Provisions (continued)

Congressional authorization if it would significantly impact existing authorized purposes or involve major structural or operational changes.

- By Army policy, the Chief's discretionary authority for reallocation of existing storage is limited to the lesser of 15% of total usable storage or 50,000 acre-feet provided it does not have significant impacts on other project purposes.
- P.L. 88-140 grants permanent rights to use the storage space to the non-Federal sponsor upon completion of the payments of the costs of storage.
- Non-Federal sponsors are responsible for acquiring the water rights necessary for the use of stored water.

Cost-Sharing

- Non-Federal sponsors must agree to reimburse the Government for 100% of capital costs of the reservoir allocated to water supply over the life of project but not more than 30 years from initial use of the project for water supply.

WATER SUPPLY STORAGE (continued)

Cost Sharing (continued)

- Current Administration policy requires that non-Federal sponsors pay all costs of new construction during the period of construction.
- Non-Federal sponsors also must agree to reimburse the Government for 100% of allocated costs of operation and maintenance on an annual basis, and allocated costs of repairs, reconstruction, major rehabilitation and replacement when required.
- For new projects, non-Federal costs are based on the actual development costs allocated to water supply storage.
- For reallocations of storage from other purposed, non-Federal costs are based on the current value of that storage (the highest of benefits/revenues forgone, replacement cost, or updated cost of storage).

WATER SUPPLY, Surplus Water

Authority

- Section 6, 1944 FCA (P.L. 78-534), 33 USC 708

Provisions

- ASA(CW) may make agreements with states, municipalities, private concerns and individuals, at prices and terms ASA(CW) finds reasonable, to provide surplus water or temporary use of available storage space from Corps reservoirs for domestic and industrial uses, rather than reallocating and granting a permanent right to that storage space.
- The storage space must have been provided in the reservoir for some other purpose not yet utilized, or the water would have to be more beneficially used as municipal and industrial water than for other authorized purposes. The use must not significantly affect the authorized purposes.
- Such agreements are normally limited to 5 years, with provisions for additional 5-year extensions.

WATER SUPPLY, Surplus Water
(continued)

Cost Sharing

- During the period of use, user pays an annual amount based on the updated capital cost of the reservoir allocated to water supply and prorated for the period of use, plus OMRR&R costs.

WATER SUPPLY, Minor Emergency Withdrawals

Authority

- Section 6, 1944 FCA (P.L. 78-534), 33 USC 708

Provisions

- When the governor of a state has declared an emergency due to a drought, temporary withdrawals of water from Corps reservoirs may be permitted to supplement normal supplies of water for domestic and industrial uses.
- Up to 99 acre-feet of storage may be reallocated by the District Engineer.

Cost-Sharing

- The cost assigned to the water is based on the current value of the storage.

RECREATION, Reservoir and Lock Projects

Authorities

- Section 4, 1944 FCA (P.L. 78-534), as amended
- Federal Water Project Recreation Act, 1965, (P.L. 89-72), as amended to add authorized recreation if Corps owns all LER and if basic project construction was completed between 9 June 1965 and 30 April 1986.
- Section 103(c)(4) and 103(e), WRDA 1986 (P.L. 99-662), after 30 April 1986
- Section 2804 of P.L. 102-575 (Reclamation Projects Authorization and Adjustments Act of 1992)

Provisions

- Projects must be under control of the Army.
- Requires non-Federal cost sharing.

**RECREATION, Reservoir and Lock
Projects** (continued)

Provisions (continued)

- If there is no willing cost sharing sponsor, Corps may only provide minimum facilities such as guardrails, gates, barricades, turnarounds, comfort stations and vault toilets for health and safety. The Corps may also provide type "C" visitor centers, handicap access and operational boat ramps.

Cost-Sharing

- Non-Federal sponsor pays all OMRR&R costs and 50% of the first costs of all recreation features, except when those costs are paid from SRUF funds.
- ASA(CW) requires the non-Federal sponsor share to be provided during construction.
- Minimum facilities are joint costs and are shared among the project purposes in accordance with Section 103(c).
- Upgrading sanitary facilities on Corps owned lands and/or operated areas is a 100% Federal cost.

RECREATION, Non-reservoir Projects

Authorities

- Section 4, 1944 FCA (P.L. 78-534)
- Section 103(c)(4) and 103(e), WRDA 1986 (P.L. 99-662), after 30 April 1986
- Section 313, WRDA 1990 (P.L. 101-640)

Provisions

- Requires non-Federal cost sharing.
- Recreation benefits shall not influence project formulation. Non-reservoir structural and nonstructural projects must attain a benefit/cost ratio greater than unity without recreation.
- Facilities must be on LER required for basic project.

RECREATION, Non-reservoir Projects

(continued)

Provisions (continued)

- Separable lands may be acquired by the non-Federal sponsor for recreation at flood control projects for access, parking and facilities required for health and safety.
- Includes recreational navigation
- Recreation development costs at structural flood control projects may not increase the Federal project cost by more than 10% without approval of the ASA(CW).
- Recreation facilities are not provided at shore protection projects.
- The Corps must consider recreation benefits in planning, operating, and maintaining projects. Corps can expend up to \$2 million annually to mitigate for the adverse impacts on recreation from the operation, maintenance, repair, rehabilitation or replacement at a project.
- Recreation may be included within ecosystem restoration projects if appropriate in scope and scale, compatible with project purpose, economically justified (stand alone), sponsored and cost shared at 50% by

RECREATION, Non-reservoir Projects

(continued)

Provisions (continued)

a non-Federal entity, and do not increase the Federal project cost by more than 10% (except with approval of ASA(CW)). Ecosystem project lands are not creditable towards non-Federal recreation costs, but separable non-Federal lands used for recreation purposes may receive cost sharing credit.

- Non-Federal sponsors pay 50% of the separable costs and all OMRR&R.
- For harbor and channel projects, non-Federal sponsors pay 50% of the joint and separable costs allocated to recreational navigation and all OMRR&R assigned to recreational navigation.
- ASA(CW) requires the non-Federal sponsor share be provided during construction.

ENVIRONMENTAL PROTECTION and RESTORATION, General (see note below)

Authorities

- F&WL Coordination Act of 1958
- NEPA (1969)
- Coastal Zone Management Act of 1972
- Clean Water Act of 1972
- Marine Protection, Research, and Sanctuaries Act of 1972
- Endangered Species Act of 1973
- WRDA's 1986, 1990, 1992, 1996, 1999, and 2000
- Coastal Wetlands Planning, Protection, and Restoration Act of 1990
- Estuary Restoration Act of 2000, Title 1 of P.L. 106-457
- Executive Order 11990, "The Protection of Wetlands"
- Executive Order 11991, "Relating to Protection and Enhancement of Environmental Quality"

Note: Environmental Protection and Restoration projects are also known as Ecosystem Restoration and Protection projects. Ecosystem and environmental are used interchangeably in law, policy, and common usage.

ENVIRONMENTAL PROTECTION and RESTORATION, General (continued)

Corps Policy

- By law and administration policy, environmental protection and restoration, navigation and flood damage reduction are the primary Civil Works missions of the Corps.
- Mitigation and restoration typically involve the same types of actions, but for different reasons. Mitigation eliminates, reduces, or compensates for the adverse impacts of a proposed project on ecosystem functions, whereas restoration efforts focus on restoring an already degraded ecological condition to produce environmental benefits.
- Focus is on the restoration of ecosystem functions, not single species habitat or improvements that are primarily of economic or commercial importance.
- Acquisition of lands should be kept to a minimum. As a target, land value should not exceed 25% TPC. Projects which exceed this amount are not likely to receive priority for budget purposes.

ENVIRONMENTAL PROTECTION and RESTORATION, General (continued)

Corps Policy (continued)

- Design standards should reflect project specific risks; for example, a levee creating a wetland need not be built to flood control standards.
- The Corps uses an ecosystem approach and the planning methodology of the Principles and Guidelines. The ecosystem approach focuses on protecting or restoring the structures and functions provided by a complete ecosystem.
- The Corps focuses on engineering solutions to ecosystem problems directly associated with the hydrologic regime. The Corps may collaborate with other agencies to optimize resources and expertise.
- Proposed projects must be justified on the basis of monetary and non-monetary benefits, but a traditional benefit-cost ratio need not be developed since the primary benefit (improved ecosystem functions) is usually not measurable in dollars.

ENVIRONMENTAL PROTECTION and RESTORATION, Specifically Authorized Projects

Authority

- Section 103(c), WRDA 1986 (P.L. 99-662) as amended by Section 210 of WRDA 1996 (P.L. 104-303)

Provisions

- Section 210 of WRDA 1996 established environmental protection and restoration as a primary project purpose with cost sharing as shown on the next page.
- Corps policy was summarized on previous two pages (pages 56 and 57). Detailed policy is contained in ER 1105-2-100, Chapter 3-5 and Appendix F, Ecosystem Restoration.

**ENVIRONMENTAL PROTECTION and
RESTORATION, Specifically Authorized
Projects** (continued)

Cost Sharing

- The Non-Federal sponsor pays 35% of total project first cost.

- The non-Federal sponsor provides all LERRD required. The value of LERRD is credited towards the sponsor's 35% share of total first costs, and the Corps will reimburse the sponsor for the amount that LERRD exceeds 35% of first costs. The sponsor cannot receive credit for work-in-kind for PED, design or construction and must pay the difference between the 35% and LERRD in cash. (For cost sharing of Section 206, WRDA 1996 projects, see pages 65 and 66)

- The non-Federal sponsor pays 100% of the cost of OMRR&R.

See the following pages for information on other environmental protection and restoration programmatic authorities.

**ENVIRONMENTAL PROTECTION and
RESTORATION, Project Modifications for
Improvement of the Environment**

Authority

- Section 1135 of WRDA 1986 (P.L. 99-662) as amended. This is a CAP.

Provisions

- Provides authority to modify structures and operations of Corps projects to improve the quality of the environment when it is determined that such modifications are feasible and consistent with the authorized project purposes. It also provides authority to implement restoration measures at locations where projects built by the Corps or jointly by the Corps and other federal agencies, have contributed to the degradation of the quality of the environment, if such measures do not conflict with authorized project purposes.
- The Federal share of the costs for any one project may not exceed \$5,000,000. There is an annual appropriation limit of \$25,000,000.

**ENVIRONMENTAL PROTECTION and
RESTORATION, Project Modifications for
Improvement of the Environment**

(continued)

Provisions (continued)

- The non-Federal sponsor may be a nonprofit entity, with the consent of the affected local government.
- Section 1135 projects can be located with mitigation improvements, but cannot be used to fulfill mitigation requirements.
- Consideration should be given to using other authorities (such as Section 210 of WRDA 1996, page 59) if the expected restoration costs exceed the current Section 1135 per project Federal share limit, or if restoration can be accomplished through no-cost, operational only changes.

**ENVIRONMENTAL PROTECTION and
RESTORATION, Project Modifications for
Improvement of the Environment**

(continued)

Cost Sharing

Feasibility study funds are initially funded completely by the Federal government. However, if the proposal is approved for implementation, the costs of the feasibility study and plans and specifications must be included as part of the total project modification costs. Work-in-kind may be provided subsequent to execution of the PCA, however, the value may not exceed 80% of the non-Federal share. The non-Federal sponsor is responsible for:

- Paying 25% of the total project modification costs;
- Providing all LERRD. The value of LERRD is credited towards the sponsor's 25% share of the total first cost and the Corps will reimburse the sponsor the amount that LERRD exceeds 25% of first costs.
- Paying 100% of OMRR&R.

**ENVIRONMENTAL PROTECTION and
RESTORATION, Beneficial Use of Dredged
Material**

Authority

- Section 204, WRDA 1992 (P.L. 102-980), as amended. This is a CAP.

Provisions

- Provides authority for the SA to implement projects for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands, in connection with dredging for construction, operation, or maintenance dredging of an authorized navigation project.
- These projects may be undertaken if the SA finds that monetary and non-monetary benefits justify project costs, and the project does not degrade the environment.
- There is an annual appropriation limit of \$15,000,000.
- The non-Federal sponsor may be a nonprofit entity, with the consent of the affected local government.

ENVIRONMENTAL PROTECTION and RESTORATION, Beneficial Use of Dredged Material (continued)

Cost Sharing

Feasibility study funds are initially funded completely by the Federal government. However, if the proposal is approved for implementation, the costs of feasibility and plans and specifications must be included and shared as part of the total project modification costs. The non-Federal sponsor is responsible for :

- 25% of project first costs, including all LERRD. The value of LERRD is credited towards the sponsor's 25% share of the total first cost and the Corps will reimburse the sponsor the amount that LERRD exceeds 25% of first costs. The sponsor cannot receive credit for work-in-kind and must pay the difference between the 25% and LERRD in cash.
- 100% of OMRR&R.

**ENVIRONMENTAL PROTECTION and
RESTORATION, Aquatic Ecosystem
Restoration**

Authority

- Section 206, WRDA 1996 (P.L. 104-303), as amended. This is a CAP.

Provisions

- The Corps may carry out aquatic ecosystem restoration and protection projects if the project will improve environmental quality, is in the public interest, and is cost effective.
- The Federal share of the costs for any one project may not exceed \$5,000,000. There is an annual appropriation limit of \$25,000,000.
- The non-Federal sponsor may implement a section 206 project and be reimbursed for the Federal share of the project cost if the project is completed prior to October 1, 2003. However, to be eligible for reimbursement, the sponsor must not initiate work for which reimbursement will be sought prior to execution of a PCA.

ENVIRONMENTAL PROTECTION and RESTORATION, Aquatic Ecosystem Restoration (continued)

Cost Sharing

Feasibility study funds are initially funded completely by the Federal government. However, if the proposal is approved for implementation, the costs of feasibility and plans and specifications must be included and shared as part of the total project modification costs. Work-in-kind may be provided subsequent to execution of the PCA. The non-Federal sponsor is responsible for:

- Paying 35% of the total project costs.
- Providing all LERRD. The value of LERRD is credited towards the sponsor's 35% share of the total first cost and the Corps will reimburse the sponsor the amount that LERRD exceeds 35% of first costs.
- Paying 100% of OMRR&R.

ENVIRONMENTAL PROTECTION and RESTORATION, Fish and Wildlife Mitigation

Authorities

- F&WL Coordination Act, 1958, (P.L. 85-624)
- Sections 103 (c) and 906 (a-d), WRDA 1986, (P.L. 99-662)
- Section 221, WRDA 1999 (P.L. 106-53)

Provisions

- Provides for modifications of projects 60% complete or less on 12 August 1958.
- Section 906 of WRDA 1986 establishes a comprehensive mitigation policy for water resources projects that generally reinforces and supplements the mitigation policy developed in response to the requirements of the Fish & Wildlife Coordination Act, which requires projects to include justifiable means and measures of mitigation.

**ENVIRONMENTAL PROTECTION and
RESTORATION, Fish and Wildlife
Mitigation** (continued)

Provisions, (continued)

- Requires Congressional authorization of land acquisition except for authority provided by Section 906(b), P.L. 99-662.
- Requires the Corps to determine justification and desirability of project modification.

Cost-Sharing

- Costs are assigned to appropriate project purposes in Section 103(c) and are shared accordingly.
- Not more than 80% of the non-Federal share of first costs may be satisfied through in-kind contributions, including facilities, supplies, and services that are necessary to carry out the enhancement of the project. (In accordance with Administration policy, Section 221 of WRDA 1999, has been applied only to the Upper Mississippi River Environmental Management Program.)

ENVIRONMENTAL PROTECTION and RESTORATION, Streamflow Regulation

Authorities

- Section 102, Clean Water Act of 1972, (P.L. 92-500), as amended.
- Section 103 (c) and (d), WRDA 1986, (P.L. 99-662)

Provisions

- In the planning of Corps projects, consideration shall be given to including storage for streamflow regulation for water quality, navigation, salt water intrusion, recreation, esthetics, and fish and wildlife.
- The need for, value of, and impact of such storage for water quality shall be determined by the EPA, and for the other purposes, by the Corps.

Cost Sharing

- Costs for streamflow regulation storage are assigned to appropriate project purposes in Section 103(c) and are shared accordingly.
- OMRR&R is 100% non-Federal.

**ENVIRONMENTAL PROTECTION and
RESTORATION, Estuary Habitat
Restoration Program**

Authority

- Estuary Restoration Act of 2000, Title 1 of P.L. 106-457

Provisions

- The Secretary of the Army may carry out estuary habit restoration projects and provide technical assistance.
- Estuary is defined to include the Great Lakes.
- Potential projects are developed and proposed by non-Federal sponsors. Projects to be funded are selected from a list proposed by the Estuary Habitat Restoration Council [established under section 105(b) of this Act]. The five agencies represented on the Council are Army, EPA, Commerce, DOI, and Agriculture.

**ENVIRONMENTAL PROTECTION and
RESTORATION, Estuary Habitat
Restoration Program** (continued)

Provisions, (continued)

- Projects must: (a) address needs identified in an estuary habitat restoration plan, (b) be consistent with the Estuary Habitat Restoration Strategy (section 106 of this Act) prepared by the Estuary Habitat Restoration Council, (c) include a monitoring plan consistent with section 107 of this Act, and, (d) include satisfactory assurances that the non-Federal interests are capable of carrying out the items of local cooperation, including OMRR&R. There are eight additional factors to be considered and two priority factors.

- Authorized appropriations for the Secretary of the Army are \$50,000,000 in fiscal years 2002 and 2003; \$60,000,000 in fiscal year 2004; and \$75,000,000 in fiscal year 2005. Additional funds are authorized for Commerce to carry out the requirements of section 107 of this Act.

ECOSYSTEM RESTORATION AND PROTECTION, Estuary Habitat Restoration Program (continued)

Cost Sharing

- ❑ For most projects the Federal share of the project costs (excluding OMRR&R) shall not exceed 65%. Non-Federal sponsors are responsible for providing required LERRD. The value of LERRD is credited toward the sponsor's share of the project cost. The non-Federal sponsor is responsible for all costs of OMRR&R. Non-governmental organizations may qualify as project sponsors. The non-Federal share may include in-kind contributions.
- ❑ The Federal share of the incremental additional cost of including pilot testing of, or a demonstration of, an innovative technology shall be 85%.
- ❑ Limited funds have been appropriated since fiscal year 2003 for the Estuary Habitat Restoration Program. The first solicitation for proposals was in 2005. Congress may continue to appropriate funds beyond 2005.

CONTINUING AUTHORITIES PROGRAM

The continuing authorities program is a group of legislative authorities by which the Corps may study, adopt, and proceed directly to construction without further Congressional authorization. Information on each program may be found by referring to the appropriate page. Federal project limits and Federal annual program limits are listed below in millions:

Section	Page No.	Project Limit	Annual Program Limit
14	26	\$1.0	\$15.0
103	33	\$3.0	\$30.0
107	9	\$4.0	\$35.0
111	12	\$5.0	N/A
204	65	none	\$15.0
205	21	\$7.0	\$50.0
206	67	\$5.0	\$25.0
208	23	\$0.5	\$7.5
1135	62	\$5.0	\$25.0

REVIEW OF COMPLETED PROJECTS (Section 216)

Authorities

- Section 216, 1970 FCA (P.L. 91-611)
- Sections 103, 105 and 905; WRDA 1986, (P.L. 99-662)

Provisions

- General authority for the Secretary of the Army to review operations of completed projects, when found advisable due to changed physical, economic, or environmental conditions. A report is made to Congress on advisability for modifying structures or operations.

Cost Sharing

- Studies - Initial Appraisal (using Operation and Maintenance, General funds) – 100% Federal; Reconnaissance - 100% Federal; Feasibility - 50% Federal/50% non-Federal.
- Improvement costs are allocated to the Federal government or non-Federal sponsors in accordance with the basic project authority and existing policies.

WATERSHED AND RIVER BASIN ASSESSMENTS

Authority

- Section 729, WRDA 1986 (P.L. 99-662), as amended by Section 202, WRDA 2000 (P.L. 106-541).

Provisions

- Section 202 provides the Secretary discretionary authority to assess the water resources needs of river basins and watersheds of the United States, including needs relating to ecosystem protection and restoration; flood damage reduction; navigation and ports; watershed protection; water supply; and drought preparedness.
- Assessments are carried out in cooperation and coordination with and the Secretary of the Interior; the Secretary of Agricultural; the Secretary of Commerce; the Administrator of the Environmental Protection Agency; and the heads of other appropriate agencies and consultation with Federal, tribal, State, interstate, and local governmental entities.

WATERSHED AND RIVER BASIN ASSESSMENT

Provisions (continued)

- Assessments will have a multi-purpose and multi-objective scope that can accommodate flexibility in the formulation and evaluation process.
- The objective of the watershed assessments will be a watershed planning document that furthers integrated water resources management, evaluating a range of project options simultaneously to determine the best combination of projects to achieve multiple goals over the entire watershed rather than examining each potential project in isolation from others. and may or may not recommend further Corps studies or projects.
- In carrying out these assessments, the Secretary may accept contributions, in cash or in kind, from Federal, tribal, State, interstate, and local governmental entities to the extent that the Secretary determines that the contributions will facilitate completion of the assessment.
- Authorized appropriations for this authority is \$15,000,000.

**WATERSHED AND RIVER BASIN
ASSESSMENT** (continued)

Cost Sharing

- The non-Federal share of assessments carried out under this authority will be 50 percent.

- Work-in-kind credit may not exceed an amount equal to 25 percent of the costs of the assessments.

TRIBAL PARTNERSHIP PROGRAM

Authority

- Section 203, WRDA 2000 (P.L. 106-541).
This is a study authority only.

Provisions

- Authorizes, in cooperation with Indian tribes and heads of other Federal Agencies, a program whereby the Secretary of the Army may study and determine the feasibility of carrying out water resources development projects that will substantially benefit Indian tribes and are located primarily within Indian country (as defined in 18U.S.C.1151) or in proximity to Alaskan Native Villages.
- Studies may address projects for flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources and such other projects as the Secretary of the Army, in cooperation with Indian tribes and the heads of other Federal agencies, determines to be appropriate.

TRIBAL PARTNERSHIP PROGRAM

Provisions (continued)

- The Secretary of the Army will consider the authorities and programs of the Department of the Interior and other Federal agencies in studies and in recommendations for carrying out of projects.
- The program funding authority is \$5,000,000 per year for fiscal years 2002 through 2006 with not more than \$1,000,000 for any tribe.

Cost Sharing

- Studies are cost shared 50 percent Federal and 50 percent Sponsor.
- Sponsors share may be provided in-kind.
- Cost sharing is subject to the non-Federal sponsor's ability to pay.

ABILITY TO PAY

Authority

- Section 103(m) of WRDA 1986, as amended (P.L.99-662)
- Section 203(d)(1) of WRDA 2000, (P.L. 106-541)
- Section 204 of WRDA 2000, (P.L. 106-541). This section amends Section 103(m) of WRDA 1986.

Provisions (Current as of WRDA 2000)

- Existing ability to pay rules apply only to flood damage reduction projects and are found in ER 1005-2-121.
- WRDA 2000 expanded the application of ability to pay to meet mission areas and feasibility studies in accordance with rules to be developed by the Secretary of the Army.
- Until such time a new rule is promulgated, the existing rule must be used.

AQUATIC PLANT CONTROL

Authorities

- Section 104, 1958 RHA (P.L. 85-500), as amended
- Sections 103 (c)(6), 105 and 941, WRDA 1986 (P.L. 99-662). This is a continuing authority.
- Sections 225 and 540 of WRDA 1996, (P.L. 104-303)
- Section 205 of WRDA 1999 (P.L. 106-53)

Provisions

- The Corps may cooperate with non-Federal agencies for control of noxious aquatic plant growth from navigable water areas not under the jurisdiction of the Corps of Engineers (reservoirs, channels, harbors) or other federal agencies.
- Program limited to \$15,000,000.
- Initiation of aquatic plant control reconnaissance and feasibility studies must be approved by ASA(CW).

AQUATIC PLANT CONTROL (continued)

Research

- This is the only Federally authorized research program for aquatic plant management.
- The purpose is to provide effective, economical, and environmentally compatible control techniques.
- Programmatic research is 100% Federal, site specific research with local benefits is 50% Federal, 50% non-Federal.

AQUATIC PLANT CONTROL (continued)

Cost Share Control Actions

Studies:

Initial Appraisal Letter Report, 100% Federal.

Reconnaissance, 100% Federal (requires ASA(CW) approval to initiate), \$15,000 maximum.

Feasibility (50% Federal, 50% non-Federal). Includes NEPA document, cooperative agreement, and management plan.

- Control actions - 50% Federal, 50% non-Federal. Non-Federal agencies agree to hold and save Federal government free from damages.

DAM SAFETY ASSURANCE PROGRAM

Authority

- Section 1203, WRDA 1986 (P.L. 99-662)

Provisions

- The Dam Safety Assurance Program (DSAP) provides for modification of completed Corps dams and related facilities for safety purposes due to new hydrologic or seismic data or changes in state-of-the-art design or construction criteria.
- Dam safety modifications which do not qualify under DSAP are accomplished under Operations and Maintenance, General funding (for smaller projects) or as Major Rehabilitation under Construction, General funding (for larger projects).

Cost Sharing

- Fifteen percent of dam modification costs under DSAP are paid by non-Federal sponsors or agreement signatories in the same proportion as the initial project construction costs.

**PLANNING ASSISTANCE TO STATES
(SECTION 22)**

Authority

- Section 22, WRDA 1974 (P.L. 93-251), as amended
- Section 605, P.L. 96-597
- Section 221, WRDA 1996 (P.L. 104-303)

Provisions

- General authority for the Corps to cooperate with states, the District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, and Commonwealth of the Northern Mariana Islands.
- Corps provides technical assistance to support state preparation of comprehensive water and related land resources development plans, including watershed and ecosystem planning.
- Corps assists in conducting individual studies supporting the state plan.

**PLANNING ASSISTANCE TO STATES
(SECTION 22)**

Provisions (continued)

- Assistance is given on the basis of state requests and availability of Corps expertise rather than through Congressional study authorization procedures.
- Section 22 cannot be used to supplement other ongoing or pending Corps efforts, or to offset required state contributions to Federal grant programs.

Cost Sharing

- Federal assistance is in the form of an effort or service sharing basis; it is not an outright grant.
- Non-Federal sponsor contributes 50% of the costs. Nationwide annual funds may not exceed \$10 million, with not more than \$500,000 in any one year in any one state or Indian tribe.

REGULATORY PROGRAM, Navigation Safety and Improvements

Authority

- Section 7 of the River and Harbor Act of 1917.

Provisions

- Corps may promulgate regulations for the use, administration, and navigation of the navigable waters of the United States for the protection of life and property and for the operations of the United States in providing channel improvements.
- Procedures for the promulgation of these regulations are similar to those for the permit program.
- Regulations can be prescribed for the use and navigation of "danger zones and restricted areas" - that is, areas likely to be endangered by Department of Defense operations. The Corps authority is exercised to facilitate DOD operations without endangering the boating public.

REGULATORY PROGRAM, Permits for Work in Waters of the United States

Authority

- Sections 9 and 10 of the River and Harbor Act of 1899.

Provisions

- (Section 9). The Chief of Engineers and Secretary of the Army must approve plans for the construction of any dam or dike across any navigable water of the United States. Legislative approval is also needed: if the navigable portion of the waterbody lies wholly within the limits of one state, the structure may be built under the authority of the legislature of that state; otherwise the approval of the U.S. Congress is required.
- (Section 10). The Chief of Engineers must approve plans to build or modify any structure in or over any navigable water of the United States, or the accomplishment of any other work affecting the course, location, condition, or physical capacity of navigable waters.

**REGULATORY PROGRAM, Permits for
Work in Waters of the United States**
(continued)

Jurisdictional Limits

- **For rivers and lakes.** Federal regulatory jurisdiction extends laterally to the entire water surface and bed of a navigable waterbody, which includes all the land, wetlands, and waters below the ordinary high water mark. (33 CFR 329.11(a)) At some point along its length, a navigable waterbody will change its character and lose its real or potential physical ability to support commerce. That upper limit point where the waterbody ceases to be a navigable water of the United States is usually termed the "head of navigation". (33 CFR 329.11(b))

REGULATORY PROGRAM, Permits for Work in Waters of the United States

Jurisdictional Limits (continued)

- For ocean and tidal waters.** Federal regulatory jurisdiction extends laterally to the entire surface and bed of a navigable water body, which includes all land, wetlands, and waters below mean (average) high water (33 CFR 329.12)). The Corps regulatory jurisdiction includes all ocean and coastal waters generally within a zone three nautical miles seaward from the coast line. For bays and estuaries, jurisdiction extends to the entire surface and bed of all waterbodies subject to tidal action. This includes marshlands and similar areas insofar as those areas are subject to inundation by the mean high tidal waters. The base line (ordinary low tide line) from which the territorial sea is measured is specified in the Convention on the Territorial Sea and the Contiguous Zone. (15 UST 1 606; TIAS 5639; 33 CFR 329.12)

**REGULATORY PROGRAM,
Sections 103 and 404**

Authorities

- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972
- Section 404 of the Clean Water Act

Provisions

- (Section 404). The Secretary of the Army, acting through the Chief of Engineers, is authorized to issue permits for discharges of dredged or fill materials into the waters of the United States, provided that such discharges are found to be in compliance with the guidelines published by EPA to implement Section 404 (b) (1) of the Clean Water Act.
- (Section 103). The Secretary of the Army is authorized to issue permits for the transportation of dredged materials for ocean disposal when dumping will not unreasonably degrade or endanger human health, welfare or amenities, or the marine environment, ecological system, or economic potentialities.

**REGULATORY PROGRAM,
Sections 103 & 404 (continued)**

Provisions (continued)

- The selection of disposal sites will be in accordance with criteria developed by the Administrator of the EPA in consultation with the Secretary of the Army. The Administrator can prevent the issuance of a permit if he finds that the dumping of the material will result in unacceptable adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries, or recreational areas.

- About 70% of the permit applications the Corps receives each year require decisions under the authority of Section 404.

**REGULATORY PROGRAM, Sections
103 and 404** (continued)

Jurisdictional Limits

- For the Clean Water Act.** Jurisdiction is more extensive than under the River and Harbor Act of 1899, (33 CFR 328). Under Section 404, jurisdiction extends to tributaries of navigable waters and adjacent wetlands. Jurisdiction does not include isolated waters that are both intrastate and non-navigable.

- For the Marine Protection, Research and Sanctuaries Act of 1972.** This Act defines a regulatory jurisdiction with respect to "Ocean Waters." (33 CFR 324.2)

REGULATORY PROGRAM, General Policies for Evaluating Permit Applications

The following policies are applicable to the review of all applications for Department of the Army permits.

Public Interest Review

- The decision whether to authorize a proposed activity, and if authorized, the conditions under which it will be allowed to occur, are determined by the outcome of the general public interest balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered, as must their cumulative effects. Considered are: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people. No permit will be granted if issuance is found to be contrary to the public interest.

**REGULATORY PROGRAM, General
Policies for Evaluating Permit Applications**
(continued)

The following general criteria will be considered in the evaluation of every application:

- (a) The relative public and private need for the proposed structure or work;
- (b) Where there are unresolved conflicts respecting resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work;
- (c) The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work may have on public and private uses to which the area is suited.

**REGULATORY PROGRAM, Section
404(b)(1) Guidelines Analysis**

The following criteria must be met:

- (a) Project must represent least environmentally damaging, practicable alternative;
- (b) Project must comply with the applicable requirements, both Federal (for example, Marine Sanctuary Regulations) and state (such as state water quality standards);
- (c) Project must not result in significant degradation of the aquatic environment;
- (d) All reasonable steps (for example, dredging windows or wetlands restoration) must be taken to minimize project impacts.

REGULATORY PROGRAM, Types of Permits

Nationwide General Permits

Nation wide General permits are issued by the Chief of Engineers for activities that are:

- on a national basis;
- similar in nature, and cause minimal environmental impacts (both individually and cumulatively).

Regional General Permits

Regional permits are issued by a District or Division Engineer for general activities when:

- the activities are on a regional basis;
- the activities are similar in nature and cause minimal environmental impact (both individually and cumulatively); and

REGULATORY PROGRAM, Types of Permits (continued)

Programmatic General Permits

Programmatic permits are a type of general permit founded on an existing state, local or other Federal agency program and designed to avoid duplication with that program. They are issued to Federal, state and local agencies and Tribes when the agency:

- licenses some or all activities regulated by the Corps in water of the U.S.;
- provides an opportunity for public comment;
- protects the aquatic environment to the same degree as the Corps Regulatory Program.
- authorized activities are similar in nature and cause minimal environmental impact (both individually and collectively).

REGULATORY PROGRAM, Types of Permits (continued)

Individual Permits

Individual permits are issued by the District Engineer for activities that do not meet the criteria for a nationwide or regional permit.

- A standard permit requires a public notice, public interest review, and National Environmental Policy Act documentation.
- A letter permit may be issued without public notice for certain activities that would not have significant impacts and would encounter no appreciable opposition. These permits are issued under Section 404, after the District Engineer has published a list of categories of activities to be covered by abbreviated processing procedures.

Regulatory information is available at the following website:

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg>

INTERAGENCY AND INTERNATIONAL SERVICES

Authorities

- For non-Department of Defense Federal agencies: Economy Act (31 U.S.C. 1535), 10 U.S.C. 3036(d), and Intergovernmental Cooperation Act (31 USC 6505).
- For state and local entities: 10 USC 3036(d) and Intergovernmental Cooperation Act (31 U.S.C. 6505).
- For International Customers: Technical Assistance Program (33 U.S.C. 2314a); Foreign Assistance Act (22 U.S.C. 2357, section 607); Federal Technology Transfer Act (15 U.S.C. 3710a).

Provisions

- Major Subordinate Commands, Districts, Laboratories, and Centers are encouraged to build better relationships with other Federal agencies and International customers (as appropriate) and accept reimbursable work, providing the criteria of ER 1140-2-211 are met. That regulation may be downloaded from:

<http://www.usace.army.mil/inet/usace-docs/eng-regs/er1140-1-211/toc.htm>

INTERAGENCY AND INTERNATIONAL SUPPORT

Provisions (continued)

- Providing non-construction technical assistance to state and local governments under the Intergovernmental Cooperation Act (31 U.S.C. 6505), as amended by Section 211 of WRDA 2000, may be performed provided the Corps is “uniquely qualified” and the proposed action is cleared by the ASA(CW).
- Providing construction services to state and local governments may be performed only under 10 USC 3036(d), with the assurance that a portion of the reimbursable funding includes Federal funds from another Federal agency and that agency does not object to the Corps providing the services.
- Providing non-construction technical and construction services to other non-DOD Federal agencies may be performed under the Economy Act (10 USC 3036(d)).
- Providing non-Federal work in conjunction to an appropriated Corps project, such as berthing area dredging and related work, is described in ER 1165-2-30 and is considered a special provision under Civil Works than under the IIS program.

